

SOUTH PARK LAND & LIVESTOCK CO., INC.

IBLA 74-202

Decided June 28, 1974

Appeal from the decision of the Bureau of Land Management's Canon City District Manager rejecting in part appellant's application for a grazing lease under section 15 of the Taylor Grazing Act.

Affirmed.

Grazing Leases: Applications-Grazing Leases: Preference Right Applicants.

An application by an adjacent land owner for a grazing lease must be rejected as to those lands which are already leased for grazing to another owner of contiguous lands whose lease will not expire for more than a year.

APPEARANCES: Ellsworth Nelsen, Project Manager, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

South Park Land & Livestock Co., Inc., applied under section 15 of the Taylor Grazing Act, 43 U.S.C. § 315m (1970), for a grazing lease of 4,970.98 acres in Park County, Colorado.

By his decision of January 29, 1974, the Canon City District Manager rejected the application as to all but 408.74 acres for the reason that the other lands were already leased for grazing to the Badger Basin Grazing Association. The Manager's decision recited that he was obliged by regulation, 43 CFR 4125.1-1(c)(2), to "... reject the application if the land applied for ... (iv) is under existing grazing lease"

Appellant has apparently accepted the decision as to all of the lands except approximately 480 acres in sections 20 and 21 of T. 11 S., R. 74 W., 6th P.M., and approximately 200 acres in sections 7 and 18 of T. 11 S., R. 75 W., 6th P.M., which lands are the subject of this appeal.

In its statement of reasons for appeal appellant argues that its privately owned or controlled lands along the boundaries of the lands applied for are much more extensive than those of Badger Basin Grazing Association, and that these lands would fall quite naturally into the grazing pattern established by appellant's deeded lands. A map is provided with the appeal to show that appellant's land nearly encloses the land leased to Badger Basin Grazing Association, which controls only relatively short stretches of contiguous lands along the public lands in question.

These are arguments which might properly be presented in support of an application which was otherwise acceptable, but they fail to overcome the stated reason for the rejection of the application. The land is currently under Lease Colo. 5-10012 to Badger Basin Grazing Association. In the regular course of events the lease will not expire until April 26, 1975. Badger Basin Grazing Association, by reason of its ownership or control of cornering or contiguous lands, stands on an equal plane of preference with the appellant notwithstanding appellant's longer borders. See Bernard N. Friend, 15 IBLA 119 (1974); Lynn L. Moedl, 10 IBLA 106 (1973); John Ringheim, 10 IBLA 270 (1973). Therefore, there is no basis for cancelling the existing lease, and the District Manager correctly perceived that he was required by the regulation to reject appellant's offer for these lands.

Moreover, the application should not have been filed at this time. Another regulation, 43 CFR 4125.1-1(a)(3), provides:

Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Applications for lands not under lease may be filed at any time.

Rejection of the offer as to the land was also appropriate under this regulation. Cf. Douglas V. Livingston, 8 IBLA 61 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the District Manager is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Joseph W. Goss
Administrative Judge

